

**New Hampshire Racing & Charitable Gaming Commission
Commission Meeting
Concord Office
January 13, 2010
10-01**

Present: Timothy J. Connors, Chairman
Warren W. Leary Jr., Secretary
Michael J. Gatsas, Member
Lynn M. Presby, Member
Bernard A. Streeter, Member
Anthony B. Urban, Member
Paul M. Kelley, Director
Sudhir K. Naik, Deputy Director
Steve Johnston, Supervisor Gaming Operations
Billie Jean Arseneault, Gaming/Licensing Supervisor
William Dewhurst, Sr. Auditor
Linda Glaser, Auditor
Shawn Graham, Auditor
Charles Saia, Legal Coordinator
Linda Darrow, Administrative Secretary

In Attendance: Rick Newman, Ed Callahan, Marlin Torguson, Karen Keelan, Joseph Waters, Sean Miller and others.

The Chairman called the meeting to order at 11:00 a.m. Legal Coordinator Charles Saia was introduced and welcomed on board by the Commissioners.

Chairman Connors called for the scheduled hearings to begin.

Mr. Sean Michael Miller Jr. Hearing

The Chairman opened the appeal hearing requested by Mr. Sean Michael Miller Jr. relative to being denied a Secondary Game Operator License. The Chairman swore in those who were to testify. Testimony was received from:

Mr. Sean Michael Miller Jr.
Ms Billie Jean Arseneault-Gaming/Licensing Supervisor

The Chairman asked if anyone else had any testimony or evidence to offer. There was none. The Chairman closed the hearing at 11:07 a.m.

At 1:10 p.m., on a motion by Commissioner Urban, seconded by Commissioner Streeter and based on all evidence received and all testimony heard voted unanimously for the following:

**Decision & Order
Appeal of Sean Michael Miller, Jr.
Secondary Game Operator License Denial**

Findings of Fact

1. On November 4, 2009, Sean Michael Miller, Jr. (hereinafter “Miller”) submitted the following documents to the State of New Hampshire Racing and Charitable Gaming Commission (hereinafter the “Commission”):
 - a. 2010 Secondary Game Operator Application, and;
 - b. Record Information Authorization.
2. On November 20, 2009, the Commission received a NH State Police Criminal History Record for Miller.
3. The NH State Police Criminal History Record of Conviction revealed that Miller received a conviction for a Class B Misdemeanor on November 2, 2009, to wit: RSA 318-B:26 III a (...*Controls any premises or vehicle where he knows a controlled drug or its analog is illegally kept or deposited...*) .
4. By letter dated November 24, 2009, the Commission notified Miller that his Secondary Game Operator License Application had been denied based on the Criminal History Record received by the Commission from the NH State Police. As its authority, the Commission cited RSA 287-D:2b VI *Operation of Games of Chance*, citing in part “...no person who has in any jurisdiction, been convicted...of a class B misdemeanor within the past 5 years...shall operate a game of chance licensed under this chapter...”. In its letter, the Commission provided Miller with his appellate rights pursuant to RSA 287-D:7 as well as a Commission “Appeal Form”.
5. The Commission received the Appeal Form from Miller on December 10, 2009.
6. On December 17, 2009, the Commission mailed a “Hearing Notice” to Miller via first class mail, postage prepaid, which notified Miller of his Appeal Hearing, (regarding the denial of his Secondary Game Operator License) scheduled for Wednesday, January 13, 2010.
7. On December 31, 2009, the Commission received an updated NH State Police Criminal History Record for Miller.
8. The updated NH State Police Criminal History Record of Conviction revealed that Miller received an additional conviction for a Class B Misdemeanor on October 15, 2009, to wit: RSA 265 A:2 (...*Driving or Operating under the Influence of Drugs or Liquor...*) .
9. On January 13, 2010, the Commission convened the Appeal Hearing regarding the denial of Miller’s Application for a Secondary Game Operator License.
10. Miller provided testimony at the hearing, which, in part, referenced:
 - a. Miller was aware that he may have an attorney represent his interests before the Appeal Hearing; however he desired to proceed without a lawyer.
 - b. Miller was aware that the audio portion of the Appeal Hearing was being “tape recorded”.
 - c. Miller confirmed that he was granted a 2009 Secondary Game Operator License by the Commission.
 - d. Miller acknowledged the two (2) convictions referenced above in item numbers three (3) & eight (8) respectively, were duly attributable to him.
 - e. Miller explained that the convictions in 2009 were out of character for him, and he assured the Commission that he would not commit any further infractions.
 - f. Miller explained that his Right to Operate a Motor Vehicle has been suspended.
 - g. Miller explained that he must complete a Driver Education Course, totaling about \$600.00 to regain his Right to Operate a Motor Vehicle.
 - h. Miller referred to a detailed letter which he had previously compiled and forwarded to the Commission with his Appeal Form and request for Appeal Hearing.
 - i. Miller’s letter and subsequent appeal requested a 2010 License due to hardship.

Conclusions of Law

1. Pursuant to RSA 287-D:2-b, VI, a game operator is prohibited from operating a games of chance if that person has been convicted of a felony or class A misdemeanor within the past 10 years or a class B

misdemeanor within the past 5 years and that conviction has not been annulled by a court. This prohibition is subject to the provisions in RSA 287-D:8, II.

2. Pursuant to RSA 287-D:8, II, the Commission has the authority to determine eligibility and fitness for licensure.
3. Based on testimony and information received, the Commission concludes that two (2) convictions, reported by the NH State Police for Miller, were limited to 2009.
4. Based on testimony and information received, the Commission concludes that the non issuance of a 2010 license would cause an undue hardship upon Miller.
5. Based on testimony given and information received, the Commission concludes, pursuant to RSA 287-D:8, II, that Sean Michael Miller, Jr. is fit to be associated with games of chance therefore he is eligible for a secondary game operator license.

Order

The Commission orders that the denial of Sean Michael Miller, Jr.'s secondary game operator license be reversed.

The Commission further ordered that for a period of One (1) year from the Appeal Hearing Date, Sean Michael Miller, Jr. is to not engage in any activities, which may violate any law, regulation, or rule whatsoever in any jurisdiction, and which may result in the issuance of a complaint, summons, or the like.

So Ordered.

Mr. Joseph Waters Hearing

At 11:08 a.m., the Chairman opened the appeal hearing requested by Mr. Joseph Waters relative to being denied the right to participate in Games of Chance. The Chairman swore in those who were to testify. Testimony was received from:

Mr. Joseph Waters
Ms Billie Jean Arseneault-Gaming/Licensing Supervisor

The Chairman asked if anyone else had any testimony or evidence to offer. There was none. The Chairman closed the hearing at 11:15 a.m.

At 1:10 p.m., on a motion by Commissioner Streeter, seconded by Commissioner Urban and based on all evidence received and all testimony heard voted unanimously for the following:

Decision & Order **Appeal of Joseph Waters** **Right to Participate in Games of Chance Denial**

Findings of Fact

1. Joseph Waters is a bona fide member of the Veterans of Foreign Wars Salem Memorial Post 8546, a charitable organization that is conducting games of chance in the state of New Hampshire.
2. On October 27, 2009, the Commission received an application from VFW Post 8546 to conduct games of chance beginning in January 2010.
3. The application from VFW Post 8546 listed Joseph Waters as a member who would be participating in the games of chance.

4. On November 30, 2009, the NH Racing and Charitable Gaming Commission received a criminal background check for Joseph Waters from the NH State Police Criminal Records Unit.
5. The NHSP record of conviction indicted that Joseph Waters received a Class B Misdemeanor on November 14, 2005 on the charge of Driving Under Influence of Drugs or Liquor 265:82.
6. By letter dated December 7, 2009, the Commission notified Joseph Waters that his secondary game operator license application had been denied based on the record received by the Commission from the NH State Police.
7. The Commission received an appeal form from Joseph Waters on December 23, 2009.
8. On December 28, 2009, a hearing notice dated December 28, 2009 was sent regular and certified mail to Joseph Waters notifying him that an appeal hearing would be held on January 13, 2010 regarding the denial of his secondary game operator license.
9. On January 13, 2010 the Commission held an appeal hearing regarding the denial of Joseph Water's application for a secondary game operator license.
10. Joseph waters provided testimony at the hearing stating that:
 - a. Mr. Waters is a bona fide member of the Veterans of Foreign Wars Salem Memorial Post 8546.
 - b. Mr. Waters is one of only five members of the Veterans of Foreign Wars Salem Memorial Post 8546 who participates in the games of chance.
 - c. Mr. Waters' violation occurred in October 2005.
 - d. Mr. Waters has had no further convictions.
 - e. Mr. Waters is a Truck Driver by trade and holds a license as such in the state of New Hampshire.

Conclusions of Law

1. Pursuant to RSA 287-D:2-b, VI, a game operator is prohibited from operating a games of chance if that person has been convicted of a felony or class A misdemeanor within the past 10 years or a class B misdemeanor within the past 5 years and that conviction has not been annulled by a court. This prohibition is subject to the provisions in RSA 287-D:8, II.
2. Pursuant to RSA 287-D:8, II, the Commission has the authority to determine eligibility and fitness for licensure.
3. The Commission determined that this was the only conviction that was reported by the NH State Police for Joseph Waters and that it occurred in October 2005.
4. Based on testimony given and information received, the Commission concludes, pursuant to RSA 287-D:8, II, that Joseph Waters is fit to be associated with games of chance; therefore he is eligible for a secondary game operator license.

Order

The Commission orders that the denial of Joseph Waters' secondary game operator license be reversed.

So Ordered.

With the hearings closed, the Chairman moved forward to the other items on the agenda.

On a motion by Commissioner Streeter, seconded by Commissioner Leary and voted to approve and place on file the Commission minutes dated December 9, 2009. Commissioner Urban recused himself since he was not in attendance on December 9, 2009.

The Racing & Charitable Gaming statistics for the fiscal period ending January 3, 2010 were reviewed. Director Kelley was asked to remove Hinsdale and Rochester Fair from the statistics since they are no longer in operation. It was noted that revenue continues to decline. Director Kelley has a scheduled meeting with Ways and Means where the revenue estimates may need to be reduced. Also a concern is the rising expense of simulcast for the tracks, which are currently negotiating costs with some of the providers.

The Games of Chance warning letters spreadsheets were reviewed. Deputy Director Naik stated that the organizations which had received warnings all responded.

The Games of Chance State Revenue spreadsheets were reviewed by the Director. It was suggested that the tracks provide the Commission with a financial report outlining the negative impact the 10% gaming tax has had on track revenue. This information will be shared with the legislature.

On a motion by Commissioner Urban, seconded by Commissioner Streeter and unanimously voted to approve Rockingham Park's request to allow telephone wagering through NH Phonebet from 1/1/10- 12/31/10.

Correspondence was reviewed. Deputy Director Naik provided a copy of his email exchange with the Department of Revenue (DRA) in regards to the Commission's role in the collection of the 10% gaming tax.

June 5, 2010 is the tentative opening date set by Rockingham for its live racing season. If the track has to bear the cost of operating live (approx \$600,000), then live racing will not be conducted. Mr. Callahan said the decision will be made by March 5th at the latest.

Under Old Business:

- ❖ None

Previously Tabled:

- ❖ On a motion by Commissioner Gatsas, seconded by Commissioner Urban and unanimously voted to take the football pool squares off the table. Discussion ensued on the legality of conducting this game at Belmont. After much discussion, Mr. Newman representing Belmont, will submit, in writing, a plan to conduct this pool at no charge and use it as a promotional/marketing tool.
- ❖ On a motion by Commissioner Gatsas, seconded by Commissioner Urban and unanimously voted to take the discussion on 10% tax rules off the table. Deputy Director Naik reported that DRA expressed an interest in having the rules coordinators from both agencies (DRA & RCGC) work together to develop the rules for the 10% tax collection. Mr. Callahan of Rockingham stated the track would fight any rules requesting them to collect personal information from winners because of the cost that will be incurred by the track.

Under New Business:

- ❖ If there is no live racing at any of the tracks this year, the question arose as to whether the contract with the University of Florida would need to be terminated. Director Kelley will work with Legal Coordinator Saia to review the contract language and report back to the Commission at its next meeting.
- ❖ As a result of the Joseph Waters hearing, a look at the licensing procedures and necessary changes to the process were scheduled to be discussed during the non-public session.
- ❖ Mr. Newman pointed out that there are currently three separate bills in the legislature to repeal the 10% gaming tax. The Senate version would exempt winnings under RSA 284 and 287 for the tracks and games of chance.
- ❖ Mr. Callahan provided preliminary information on two events which he is working to schedule for Rockingham. As soon as details are worked out, the information will be forwarded to the Commission for their approval.

At 12:00 noon, on a motion by Commissioner Streeter, seconded by Commissioner Leary and by a unanimous roll call vote the Commission voted to adjourn the regular meeting, and go into non-public session.

Connors	-	Yes
Leary	-	Yes
Gatsas	-	Yes
Presby	-	Yes
Streeter	-	Yes
Urban	-	Yes

At 1:10 p.m., on a motion by Commissioner Presby, seconded by Commissioner Leary and by a unanimous roll call vote the Commission voted to come out of the non-public session and to permanently seal the non-public minutes.

Connors	-	Yes
Leary	-	Yes
Gatsas	-	Yes
Presby	-	Yes
Streeter	-	Yes
Urban	-	Yes

The next Commission meeting is scheduled for Wednesday, January 27, 2010 in Concord beginning at 11:00 a.m.

The Chairman closed the public meeting at 1:15 p.m.

Respectfully Submitted,

Warren W. Leary, Jr.
Secretary